

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 08 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

OSCAR AVELAR-OLMOS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-75226

Agency No. A97-773-693

MEMORANDUM*

On Petition for Review of an Order of the
Bureau of Immigration and Customs Enforcement

Submitted June 18, 2008**

Before: REINHARDT, W. FLETCHER, and CLIFTON, Circuit Judges.

Oscar Avelar-Olmos, a native and citizen of Mexico, petitions for review of
the Bureau of Immigration and Customs Enforcement's decision to reinstate his

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

prior removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims of due process violations. *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny the petition for review.

Avelar-Olmos' challenge to 8 U.S.C. § 1231(a)(5) is foreclosed by *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 498 (9th Cir. 2007) (en banc) (concluding that a previously removed alien who reenters the country unlawfully is not entitled to a hearing before an immigration judge on whether to reinstate a prior removal order).

Contrary to Avelar-Olmos' contention, 8 U.S.C. § 1231(a)(5) applies to his expedited removal order. *See Morales-Izquierdo*, 486 F.3d at 496 n.14 ("Any mode of departure - voluntary or involuntary - while subject to an order of removal constitutes a removal for reinstatement purposes.").

Moreover, Avelar-Olmos is precluded from applying for adjustment of status. *See Padilla v. Ashcroft*, 334 F.3d 921, 925 (9th Cir. 2003) (8 U.S.C. § 1231(a)(5) bars an alien who has had a removal order reinstated from adjustment of status).

Avelar-Olmos' due process contentions are unavailing because he has not demonstrated prejudice. *See Padilla*, 334 F.3d at 924-25 (requiring prejudice to prevail on a due process claim).

PETITION FOR REVIEW DENIED.